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Seminar**

NARPM Presents...Institutional Controls

Sponsored by: U.S. EPA Office of Superfund Remediation and
Technology Innovation

Delivered: April 4, 2012, 1:00 PM - 3:00 PM, EDT (17:00-19:00 GMT)

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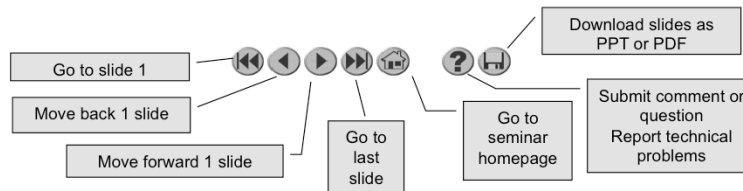
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Housekeeping

- Please mute your phone lines, Do NOT put this call on hold
 - press *6 to mute #6 to unmute your lines at anytime
- Q&A
- Turn off any pop-up blockers
- Move through slides using # links on left or buttons



- This event is being recorded
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Although I'm sure that some of you have these rules memorized from previous CLU-IN events, let's run through them quickly for our new participants.

Please mute your phone lines during the seminar to minimize disruption and background noise. If you do not have a mute button, press *6 to mute #6 to unmute your lines at anytime. Also, please do NOT put this call on hold as this may bring delightful, but unwanted background music over the lines and interrupt the seminar.

You should note that throughout the seminar, we will ask for your feedback. You do not need to wait for Q&A breaks to ask questions or provide comments. To submit comments/questions and report technical problems, please use the ? Icon at the top of your screen. You can move forward/backward in the slides by using the single arrow buttons (left moves back 1 slide, right moves advances 1 slide). The double arrowed buttons will take you to 1st and last slides respectively. You may also advance to any slide using the numbered links that appear on the left side of your screen. The button with a house icon will take you back to main seminar page which displays our agenda, speaker information, links to the slides and additional resources. Lastly, the button with a computer disc can be used to download and save today's presentation materials.

With that, please move to slide 3.

Institutional Controls (ICs)

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Agenda

- **Contacts/ Resources**
- **ICs on Tribal Lands**
- **Highlights of Several Recent Guidance Documents**
- **Efforts of National Work Groups**
- **Highlight of EPA Collaboration with Local Governments**

Resources/ Contacts

- **U.S. EPA Headquarters Contacts**
- **James Miles, OSRE; miles.james@epa.gov**
- **Chip Love, OSRTI; love.chip@epa.gov**
- **List of Regional and Other HQ Contacts Available On Clu-In Website under Other Resources or on EPA's intranet at:**
<http://intranet.epa.gov/oeca/osre/workgroup/ic/index.html>

2004 IC Strategy

- " **STRATEGY TO ENSURE INSTITUTIONAL CONTROL IMPLEMENTATION AT SUPERFUND SITES** " OSWER No. 9355.0-106 September 2004
- EPA's strategy (Strategy) for ensuring that institutional controls (ICs) are successfully implemented at Superfund sites, with an emphasis on evaluating ICs at sites where all construction of all remedies is complete (construction complete sites)
- Management Advisory Group for Institutional Controls (MAGIC)
- IC Program and Legal Coordinator in Each Region
- National Workgroup with members from HQ, Regions, DOJ and OGC

National Workgroup Topics

- National IC Tracking
- ICs on Tribal lands
- “Uncooperative” landowners
- Use of ICs at vapor intrusion sites
- Model docs – Consent Decree & SOW (PRP-lead)
- Coordination with local governments

National Workgroup Topics

- Meets Monthly, as needed.
- Sharing Information.
- Addressing novel issues.
- Discussing Site-Specific IC questions.
- Developing Sub-workgroups as needed to address topics.



Institutional Controls in Indian Country

Cecilia De Robertis
Office of Site Remediation Enforcement
(OSRE)



Land Ownership

Category	Description	Holder of Title
Trust Land	Legal title held in trust by United States for the benefit of a tribe or tribal member.	United States
Restricted Fee Land	Legal title held by tribe or tribal member subject to restrictions on alienation	Tribe or Tribal member
Fee Simple	Legal title held without restriction	Tribe, Tribal member, or non-tribal member



Which IC Works Best? Proprietary Controls

Advantages

- Title review required for mortgages, mining/timber leases
- Tied to the land
- If Trust or restricted land, enforceable against BIA

Disadvantages

- Land is rarely transferred
- BIA land offices far and few between, so rarely searched
- BIA land offices in disarray
- Hard for BIA to control other people's activities



Which IC Works Best? Governmental Controls

Advantages

- Utilizes a process that is already in place, often with enforcement
- Empowers tribes as stewards
- More likely to be reviewed than proprietary controls

Disadvantages

- Tribe may modify or change the governmental control
- EPA does not have enforcement authority
- Resource intensive



Which IC Works Best? Informational Devices

Advantages

- Very flexible and adaptable to cultural needs
- Easy to layer

Disadvantages

- Not enforceable
- Tribes may be reluctant to give information or limit sacred activities
- Difficult to monitor
- Cannot force culture



Which IC Works Best? Enforcement and Permit Tools

Advantages

- May prohibit specific activities on a particular parcel
- MoA may be required due to sovereignty

Disadvantages

- Contractually based and do not "run with the land"
- Unilateral order may lead to political issues



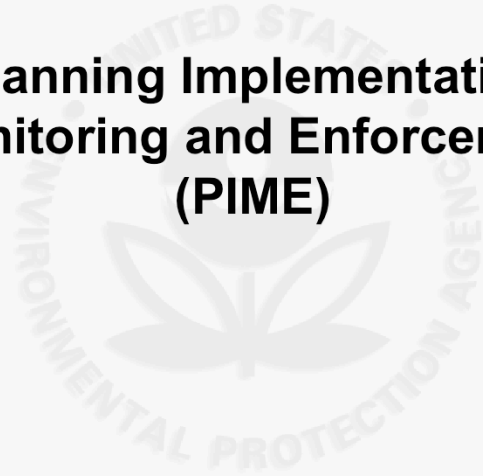
Contact

- ICs in Indian country Workgroup
- Cecilia De Robertis
- (202) 564-5132
- derobertis.cecilia@epa.gov

IC GUIDANCE AND REFERENCE DOCUMENTS

- PIME
- ICIAP
- Supplement to the Five-Year Review
- <http://www.epa.gov/superfund/policy/ic/guide/index.htm>

Planning Implementation Monitoring and Enforcement (PIME)



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PIME

- *“Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites,”* OSWER 9355.0-89, EPA-540-R-09-001, November 2011, Interim Final.

PIME

- PIME integrates concepts from other disciplines such as real law, land estate and, land use planning and community engagement
- Provides roles and responsibilities for IC life cycle

PIME

- Describes roles of states, tribes, local governments and communities in IC selection and maintenance
- Supports EPA's "enforcement first" policy for ICs
- Recommends early coordination with stakeholders

Significant Policy Statements in PIME

- IC “trigger”: UU/UE as one factor
- Documentation of use restrictions & ICs in decision documents
- Community involvement
- Capacity of IC stakeholders, particularly local governments



Evaluating Institutional Controls during the 5-Year Review Evaluation

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U.S. Environmental Protection Agency

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ICs in 5-Year Review Evaluations

- **"Recommended Evaluation of Institutional Controls: Supplement to the Comprehensive Five-Year Review Guidance", OSWER Directive 9355.7-18, September 2011 [PDF 2.2MB / 28pp.]**



ICs in 5-Year Review Evaluation

- This guidance supplements OSWER's 2001 Comprehensive Five-Year Review Guidance and provides recommendations for conducting five-year reviews for the IC component of remedies in a manner similar to the review of engineering or other remedy components



ICs in 5-Year Review Evaluation

- Purpose of the review is to evaluate the implementation and performance of a remedy to determine if the remedy is or will be protective of human health and the environment
- Identify issue and recommend the need for additional evaluation and/or follow-up actions included as highlighted issues and recommendations.



ICs in 5-Year Review Evaluations

- Key Questions
- Clarity of Use Restrictions and Exposure Pathways
- Accuracy of Property Information and Mapping
- Adequacy of Long-Term Stewardship



ICs in 5-Year Review Evaluations

- Document review, Interviews and Inspections
- Supplemental evaluations may be necessary
- ICs are considered along with other remedy components.
- Make protectiveness determination- both short-term and long-term
- Role of PRPs



ICs in a 5-Year Review Evaluation

QUESTION A: *Is remedy functioning as intended by Decision Document?*

Do ICs cover the use restrictions specified by ROD?

Are ICs in place?

Are exposures occurring?



ICs in a 5-Year Review Evaluation

QUESTION B: *Are exposure assumptions, toxicity data, cleanup levels, and RAOs still valid?*

Any changes to land use, zoning?

Any changes to ground/surface water use?

Any new exposure pathways?



IC's in 5-Year Review

Question C: *Has any other information come to light that could call into question the remedy protectiveness?*

State or local law change?

Any known breaches?

Contamination found is a new area or has moved?



ICs in a 5-Year Review Evaluation

POSSIBLE RECOMMENDATIONS:

Need to select and implement an IC.

Need an additional IC layer.

Need to review reliability of IC.

Need communication strategy.

Need Long-Term Stewardship Plan.

Explore use of state's One-Call System for ICs.



ICs in 5-Year Review Evaluations

PROTECTIVENESS DETERMINATION:

ICs are considered along with other remedy components.

Examples of determinations are found in the guidance.



Institutional Controls Implementation and Assurance Plan (ICIAP)

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A Plan that documents:

- Activities necessary to implement . . .
- maintain . . .
- enforce . . . and
- terminate the ICs
- AND who does what (roles and responsibilities)



ALSO . . .

- Done as part of RD
- already in the model Consent Decree



ICIAP

- Guidance is being created
- Can use the outline as a guide – ask Dante and Sheri (or your Regional IC Coordinator)



Other Guidance Available

- **Citizen's Guide** – *"Institutional Controls: A Citizen's Guide to Understanding Institutional Controls at Superfund, Brownfields, Federal Facilities, Underground Storage Tank, and Resource Conservation and Recovery Act Cleanups,"* OSWER 9255.0-98, EPA-540-R-04-004, October 2004.
- **Site Manager's Guide** – *"Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups,"* OSWER 9355.0-74FS-P, EPA 540-F-00-005, September, 2000.
- **Bibliography** - *"Institutional Controls Bibliography: Institutional Control, Remedy Selection, and Post-Construction Completion Guidance and Policy"* OSWER 9355.0-110, December 2005.



Institutional Controls:

- **EPA Collaboration with Local and State Governments**
- **Importance of Effective Governmental Institutional Controls**



Examples of EPA's IC Collaboration Across Jurisdictions at Superfund Sites

- Region 4 MOA with South Florida Water Management District.
- MOU Between State and City with Region 7 Oversight in Excelsior Springs, MO.
- City of Aspen ordinance at the Smuggler Mountain Site in Region 8.
- Groundwater Control Area / Ordinances at Former Weldon Springs Site in Region 7
- Bunker Hill Local IC Program: Panhandle Health District (and four small cities) in Idaho, Region 10 ; Jasper and Newton County Soil IC Program in Region 7 and Pending Soil ICs in Madison County In Region 5 (other large-scale contamination sites have similar programs).
- And many other formal and informal "partnerships" with local governments



Resources

- Resources are also available to provide technical assistance to site teams and communities to understand and implement ICs



Questions

Resources & Feedback

- To view a complete list of resources for this seminar, please visit the **Additional Resources**
- Please complete the **Feedback Form** to help ensure events like this are offered in the future

The screenshot shows a web page for the U.S. EPA Technology Innovation Program. The page title is "U.S. EPA Technical Support Project Engineering Forum Green Remediation: Opening the Door to Field Use Session C (Green Remediation Tools and Examples) Seminar Feedback Form". The page contains a feedback form with the following fields: First Name, Last Name, Daytime Phone Number, and Email Address. There is a checkbox labeled "Please send a copy of my feedback confirmation as a record of my participation to this address". The date of the seminar is listed as December 15, 2009. The page also features a navigation menu on the left with links for "Go to Seminar", "Links", "Feedback", "Home", and "CLU-IN Studio".

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